IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1025 OF 2005

IN

EXECUTION APPLICATION NO.183 OF 2004

IN

SUMMARY SUIT NO.1510 OF 2002

M/s.G.M.Breweries Ltd. ...Plaintiffs

Versus

M/s.Siddhivinayak Builders & Ors. ...Defendants

And

Amit R.Mistry & Rameshbhai K. Mistry ...Intervenors/Obstruc./ Respondents

.....

Ms.Sumedha Rao for Applicants/Intervenors.

Mr.O.A.Das for Plaintiffs.

Mr.G.T.Mestha, Commissioner for Taking Accounts is present.

.....

CORAM: A.M.KHANWILKAR, J.

SEPTEMBER 20, 2005.

P.C.

1. Heard Counsel for the parties. Perused

the pleadings.

2. This Chamber Summons is taken out in respect of Flat bearing No.A-603 in Venus Building, situated at Chikoowadi, Boriwali (West), Mumbai - 400 092 for raising of attachment and setting aside the order as passed.

3. Counsel for the Applicants relies on document at page 135 of the compilation to contend that possession of flat in question being Flat No.A-603 in Venus Building was made over to the Applicants. This document, however, indicates that the Applicants were allowed to enter the flat for the limited purpose of undertaking furnishing of the flat and not for the purpose of occupying the flat. That document cannot be construed as possession receipt in that sense. Counsel for the Applicants submits that issuance of such authority by the seller presupposes that the Applicants have paid the entire consideration under the Agreement. This contention cannot be accepted. There can be no presumption about payment of entire consideration. The Applicants are required to

establish that fact. Except the Agreement for Sale dated 26th April 1996, no other document is produced to point out that entire consideration has been paid.

4. The Judgment Creditors have accepted the case of the Applicants of payment to the Judgment Debtors only to the extent of Rs.2,47,250/- (Rupees Two Lakhs Forty-seven Thousand Two Hundred Fifty). In other words, the Applicants have still not paid a sum of Rs.69,000/- (Rupees Sixty-nine Thousand) under the said Agreement. So long as that amount is not paid, the Applicants will have no basis to resist the claim of the Judgment Creditors, as attachment warrant has been issued on 7th July 2004 before which period, as found earlier, possession has not been made over to the Applicants.

5. To get over this position, Counsel for the Applicants fairly submits that instead of entering into this controversy, which may require the Applicants to adduce evidence to substantiate their claim, the Applicants would deposit sum of Rs.69,000/- (Rupees Sixty-nine Thousand) in this

Court, without prejudice to the rights and contentions of the Applicants.

6. In view of the above assurance given by the Applicants, Chamber Summons is allowed to the limited extent of raising of attachment in respect of Flat No.A-603 in Venus Building, on condition that the Applicants will deposit sum of Rs.69,000/- (Rupees Sixty-nine Thousand) in this Court within four weeks from today.

A.M.KHANWILKAR, J.